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for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and for the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MICHAEL MOST,

Defendant.

Adv. Pro. No.10-04941 (SMB)

STIPULATION REGARDING DISMISSAL OF CERTAIN CLAIMS

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and the substantively consolidated estate of Bernard L. Madoff individually, by and through his counsel, Baker & Hostetler LLP, and Defendant Michael Most (“Defendant”), by and through his counsel, Stim & Warmuth, P.C. (collectively, the “Parties”), hereby stipulate and agree to the following:

1. On December 2, 2010, the Trustee filed the Complaint against Defendant. Defendant filed an Answer to the Complaint on December 12, 2011.

2. On January 3, 2012, the Trustee filed the Amended Complaint against Defendant. Defendant filed an Answer to the Amended Complaint on January 17, 2012. Defendant filed an Amended Answer to the Amended Complaint on October 8, 2014.

3. The Defendant moved to withdraw the reference on several grounds including the issue of whether, in light of the holding in *Picard v. Katz*, No. 11 Civ. 3605 (JSR) (S.D.N.Y. Sept. 27, 2011), 11 U.S.C. § 546(e) applies, limiting the trustee’s ability to avoid certain transfers. Withdrawal of the reference on this issue was granted and thereafter, a consent order was entered granting certification pursuant to Fed. R. Civ. P. 54(b) for entry of final judgment dismissing certain claims. The Defendant was covered by the consent order. The Defendant’s action was consolidated under the action captioned *Picard v. Ida Fishman Revocable Trust*, No. 11-cv-7603, and a final judgment was entered on May 23, 2012 by the Hon. Jed S. Rakoff, U.S.D.J., dismissing all claims for preferences under section 547 of the Bankruptcy Code, constructive fraudulent transfers under section 548(a)(1)(B) of the Bankruptcy Code and actual and constructive fraudulent transfers or fraudulent conveyances under provisions of the New York Debtor & Creditor Law incorporated by section 544(d) of the Bankruptcy Code. The

judgment was affirmed by the Second Circuit Court of Appeals, *In re Bernard L. Madoff Investment Securities LLC Debtor*, 773 F.3d 411 (2d Cir. 2014) (“Second Circuit Order”) and on June 22, 2015, the Supreme Court of the United States denied *certiorari* of the Trustee’s appeal of the Second Circuit Order. By reason thereof, the Trustee’s claims in counts Two through Six of the Amended Complaint were dismissed pursuant to final judgment.

4. The Amended Complaint includes allegations regarding “obligations” at paragraphs 36-38 and seeks relief with respect to “obligations” in Counts One, Two, Three, Four and Six and paragraphs i, ii, iii, iv and vi of the prayer (the “Obligations”).

5. Numerous defendants in other related adversary proceedings, but not Defendant, filed motions to dismiss (the “Motions to Dismiss”) complaints or amended complaints filed against them by the Trustee.

6. On June 2, 2015, the Bankruptcy Court granted in part and denied in part the Motions to Dismiss for reasons set forth in its Memorandum Decision Regarding Omnibus Motions to Dismiss (the “Decision”) [ECF No. 10089 in Adv. Pro. No. 08-01789 (SMB)] which included a dismissal of counts in which the Trustee sought to avoid obligations pursuant to sections 548(a)(1) and 544 of the Bankruptcy Code, applicable provisions of SIPA including sections 78fff(b) and 78fff-1(b) and New York Debtor and Creditor Law.

7. Pursuant to the Decision and pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, as incorporated by Rule 7041 of the Federal Rules of Bankruptcy Procedure, all allegations, claims and counts in the Amended Complaint in which the Trustee sought to avoid the Obligations are hereby dismissed with prejudice.

8. Except as set forth herein, this Stipulation has no effect on the Trustee’s remaining counts in the Amended Complaint.

9. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation shall be deemed an original.

Dated: August 18, 2015

Of Counsel:

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